

¹ 5 U.S.C. § 8101 *et seq.*

fracture and issued a schedule award for a seven percent impairment of the left lower extremity. The period of the award was from August 16, 1996 to January 4, 1997.

Appellant later claimed an additional schedule award. Dr. David Weiss, an osteopath, examined him on October 3, 2011 and calculated a 12 percent impairment of the left lower extremity. He found that appellant reached MMI on that date.

An OWCP medical adviser concurred with the impairment rating. He stated, however, that he believed MMI would be the date of the previous schedule award.

On February 15, 2012 OWCP issued a schedule award for an additional five percent impairment of the left lower extremity, as appellant had previously received compensation for the first seven percent of his new rating. It identified MMI as August 16, 1996. The period of the additional schedule award was from August 16 to November 24, 1996.²

Appellant does not appeal the 12 percent impairment rating. He asks the Board to review instead the date of MMI. Appellant cites Board precedent that MMI is usually considered the date of the evaluation that OWCP accepts as definitive.³ Further, he argues that his condition in 1996 was far better than it is now.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.⁴ Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵

Only permanent impairment may be rated according to the A.M.A., *Guides*, and only after the status of MMI is determined. Impairment should not be considered permanent until a reasonable time has passed for the healing or recovery to occur. This will depend on the nature of underlying pathology, as the optimal duration for recovery may vary considerably from days to months. The clinical findings must indicate that the medical condition is static and well stabilized for the person to have reached MMI.⁶

² This period overlapped that of appellant's initial schedule award.

³ *L.R.*, Docket No. 11-1397 (issued January 6, 2012).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁶ A.M.A., *Guides* 24 (6th ed. 2009); see *Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until maximum medical improvement -- meaning that the physical condition of the injured member of the body has stabilized and will not improve further -- has been reached).

The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the injury. The question of when MMI has been reached is a factual one that depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.⁷ The date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment.⁸

If the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In such a case, the original award is undisturbed and the new award has its own date of MMI, percent and period.⁹

ANALYSIS

Appellant does not dispute the impairment rating he received. He contests the date the schedule award began. The Board will therefore review whether OWCP properly determined the date of MMI.

As the Board noted, the date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment. That date was October 3, 2011, the date that Dr. Weiss, the evaluating osteopath, examined appellant and determined that he had a 12 percent impairment of his left lower extremity. Further, that was the date Dr. Weiss identified as the date of MMI.

An OWCP medical adviser who believed that the date would be the date of the previous schedule award offered no medical rationale. The Board finds his opinion to be of little probative value. As OWCP procedures make clear, an additional schedule award has its own date of MMI, percent and period.

Accordingly, the Board will modify OWCP's February 15, 2012 decision to find that appellant reached MMI by October 3, 2011 and that the period of his additional schedule award should begin on that date.

CONCLUSION

The Board finds that OWCP improperly determined the date of MMI for appellant's additional schedule award.

⁷ *Marie J. Born*, 27 ECAB 623 (1976).

⁸ *E.g., Richard Larry Enders*, 48 ECAB 184 at n.12 (1996) (date of the audiologic examination).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.b(2) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 15, 2012 decision is modified to reflect the date of MMI as October 3, 2011 and is affirmed as modified.

Issued: November 2, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board